IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15-12-2006

CORAM

THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

C.R.P.PD.No.1237 of 2006

Sakthivel ... Petitioner/Plaintiff

Versus

Dhandapani. ... Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.7.2006 made in I.A.No.477 of 2005 in O.S.No.171 of 2002 on the file of the Sub Court, Dharapuram.

For Petitioner : Mr.N.Manoharan
For Respondent : Mr.Rita Chandrasekaran

ORDER

Aggrieved over fair and decreetal order dated 20.7.2006 made in I.A.No.477 of 2005 in O.S.No.171 of 2002 on the file of the Sub Court, Dharapuram, this civil revision petition is filed.

2.Brief facts of the case are as follows:

The petitioner is the plaintiff, who filed the suit in O.S.No.171 of 2002 for recovery of a sum of Rs.1,35,434/- based on a promissory note said to have been executed by the respondent/defendant. Initially the suit was decreed exparte on 10.06.2004. Subsequently the petitioner has initiated execution proceedings in E.P.No.71 of 2004. The petitioner has also filed I.A.No.531 of 2002 for attachment of the property but the defendant has produced security. The said application was closed accepting the security furnished by the respondent/defendant. During the execution proceedings, the petitioner has filed a petition to set aside the exparte decree and the same was allowed thereafter the defendant/respondent has also filed I.A.No.477 of 2005 to send the promissory note for expert opinion on the ground that the signature found in the said promissory note does not belong to him and wanted to compare the said signature with the signature found in the written statement as well as in the vakalath. The learned Subordinate Judge allowed the same.

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3.Aggrieved over the said order this civil revision petition is filed.

4.Mr.N.Manokaran, the learned counsel appearing for the revision petitioner would contend that it is for the plaintiff to prove that the disputed promissory note was executed by the defendant and the plaintiff is always willing and ready to prove the same by letting in oral and documentary evidence. According to him, the defendant has filed an application belatedly three years after the filing of the suit. He would further contend that a person's signature may in course of time vary.

5.Per contra, Mrs.Rita Chandrasekaran, the learned counsel appearing for the respondent would contend that the opinion of the expert would clinch the issue whether the promissory note is genuine or forged.

6.I gave anxious consideration on the rival contentions made by both sides. Along with the application, the respondent/defendant has not produced any of his signature in any one of the document of the relevant period except the letter said to have been written in the year 2000. A person's signature may change or vary with the passage of time and the signature of the person concerned involved in the case on hand is not an exception to this common phenomenon. Apart from that, burden is on the plaintiff to prove that the alleged promissory note was executed by the defendant. It is for him to take necessary steps, if signature found in the promissory note is denied by the defendant. If he fails to take necessary steps to prove either by oral or documentary or expert opinion he will be a sufferer.

7.The learned counsel appearing for the petitioner has pressed into service a judgement of a Division Bench of this court reported in 2006 (3) CTC 39 (Central Bank of India v. Antony Hardware Mart, wherein this court has held as follows:

> "9.At the outset, we want to point out that the Trial court has committed an error in comparing the signatures in Ex.A-2 and Ex.A-5 with the admitted signature of the defendant in the Vakalath and written statement. In the judgement in Somasundaram v. Palani, 1999 (3) CTC 156, this court has held as follows:
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> "Even though the Court may have the power to compare the signatures, there must be some admitted signature of the defendant, on the basis of which a comparison will have to be made. In this case, a comparison has been made on the basis of signatures

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affixed by defendant in the vakalath and written statement, which are documents that have come into existence after the dispute arose, and after the promissory note in question was filed into Court along with plaint. A comparison should not have been made on the basis of those signatures. If that be so, it has to be held that the comparison was not made in accordance with law, even though the court is empowered to make a comparison".

It is settled law that the disputed signature can be compared with admitted signature, which were contemporaneous and not with the admitted signatures obtained subsequent to the date of the disputed signature. By lapse of time, there may be some difference in the signature of a person. Only based on that principle, the above said judgment has been rendered by the learned single Judge of this Court. Therefore, the Trial Court erred in comparing the signatures in Ex.A.2 and Ex.A.5 with the signatures found in the Vakalath and written statement of the defendant.

10.The Trial Court has pointed out that the Manager of the Bank, who wrote Ex.A-2 has not been examined and that itself may not be a ground to disbelieve the case of the plaintiff, if there are other evidence to prove the case of the plaintiff. The Trial Court has observed that when the defendant had denied his signature in Ex.A.2, it is the defendant's duty to summon his admitted signature from the Indian bank where he is holding an account and prove that the signature in Ex.A2 is not his signature. This observation of the Trial Court is wrong. Since, it is the duty of the plaintiff to establish his case, the Trial Court has erred in casting the burden on the defendant. Now, we have to see whether the plaintiff has proved his case and whether the contentions raised by the learned counsel for the defendant are acceptable.

15.In this context it is useful to refer to the evidence of D.W.1. In his cross-examination D.W.1 has stated as follows:

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"என்னிடம் கொடுக்கப்பட்ட ஆவணத்தில் உள்ளது என் கையெழுத்து, EX.A-5 அந்த ஆவணம், 31.03.1985 ல் முடிய உள்ள என் சொத்து விவரங்களை EX.A-5 ல் சொல்லி இருக்கிறேன;

Having admitted his signature in Ex.A-5, in the later part of his deposition D.W.1 has stated as follows:

"Ex.A-5/ல் கண்ட கையெழுத்தும், வக்காலத்தில் கண்ட கையெழுத்தும் என்னுடையது தான் என்பது தவறு, நுஒ.1/3/ ல் உள்ளது என்னுடைய கையெழுத்து அல்ல".

The retraction on the part of D.W.1 could only be an after thought. When he has categorically admitted his signature in Ex.A-5 and when he has also admitted the contents in Ex.A-5 stating that he has given the details of his properties in Ex.A-5, D.W.1 has chosen to go back on his admission. He has gone to the extend of denying his signature in the vakalath. The contention of the learned counsel for the appellant that D.W.1 has admitted his signature in Ex.A-5 without properly understanding the question put to him cannot be accepted. In this context, we want to refer to a judgement of the Supreme Court in Ramji Dayawala & Sons (P) Ltd. v. Invest Import, AIR 1981 SC 2085, wherein the Honourable Supreme Court has held as follows:

"Admission, unless explained, furnishes the best evidence"

If we apply the above said law laid down by the Supreme Court to the facts of this case, the admission made by D.W.1 is the best evidence as far as Ex.A-5 is concerned. As held in K.S.Satyanarayana v. V.R.Narayana Rao, 1999(6)SCC 104, in this case also the defendant was trying to get out of the situation by contradicting his signature found in Ex.A-5 with his signature in the vakalath, in order to defeat the claim of the plaintiff. In such a situation, the Supreme Court has held that the Trial Court could have also compared the signatures of the defendant as provided in Section 73 of the Indian Evidence Act. In this case, the Trial Court, instead of comparing the disputed signature in Ex.A2 with the signature found in the vakalath and written statement, should have compared the admitted signature of the defendant found in Ex.A-5 with the disputed signature found in Ex.A-2. We compared the

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disputed signature in Ex.A-2 with the admitted signature in Ex.A-5 and we do not find any dissimilarity between two signatures. We are of the view that the signature found in Ex.A-2 and the signature found in Ex.A-5 are similar and is that of the same person.

8.A Judgement reported in 2006 (4)CTC 850 (N.Chinnasamy vs. P.S.Swaminathan) has also been pressed into service, wherein this court has held as follows:

"32.From the above judgement, the following principles have emerged:

(1)Section 73 of the Indian Evidence Act authorises the court to compare the disputed signature with the admitted signature in order to come to its own conclusion.

(2)It is always safe for the Court to take the aid of handwriting expert to have the expertise to scientifically compare such handwriting with reasons.

3)The practice of sending original documents in the custody of the courts to the handwriting experts is a highly objectionable one and a very bad procedure.

(4)The proper procedure would be to permit the handwriting expert to inspect the document in the Court premises itself in the presence of some responsible officers of the Court.

(5)If necessary, the expert may be permitted to have photographic copies of documents in the presence of the responsible officers of the Court.

(6)When examination of the disputed documents within the Court's premises, is not possible due to genuine difficulties expressed by the expert, the court has to find out the alternative way of achieving the object for the purpose of doing justice.

(7)In such circumstances as mentioned above, the application has to be treated as an Application for an appointment of the Commissioner in whose presence the examination of the disputed document has to be conducted by the expert.

(8)When the investigation cannot be conveniently conducted within the premises of the Court and the same has to be carried out in the laboratory of the Forensic Department of the Government of Tamil Nadu, it is necessary to appoint a commissioner to conduct the investigation of the document in his

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presence.
(9)Filing Application for examination of documents by handwriting expert at a late stage thereby protracting and holding up the proceedings is highly objectionable.
(10)Merely because of the reasons that the Trial Court has by itself compared the admitted signature and the disputed signature invoking Section 73 of the Indian Evidence Act there is no bar or ban for the First Appellate Court for sending the documents to get the expert opinion.
(11)Expert opinions could give much more clarity for arriving at a decision upon the truth and genuineness of a disputed document.
(12)When the defendant denies the signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps for examination of the disputed signature by sending the document to a handwriting expert.

37.It is not in dispute that the written statement was filed on 10.6.1999 and the Application was filed on 19.10.2004 only. But in the affidavit filed in support of I.A.No.1531 of 2004 no explanation much less an acceptable explanation was given by the defendant for taking out the Application under Section 45 of the Indian Evidence Act after nearly more than 5 years. Further, even though it was stated in the affidavit that the signature in the sale agreement dated 15.2.1994 should be compared with his admitted signature by handwriting expert, there was no mention about the document containing his signature which was admitted by him and which should be compared with the disputed signature. In such circumstances the Trial Court has rightly observed that the application lacks bona fide. This Court in T.A. Narasimhan's case (cited supra) had deprecated the practice of filing Applications for examination of documents by handwriting experts at a late stage and thereby protracting and holding up the proceedings. This decision is applicable to the facts of the present case and I do not find any illegality nor infirmity in the order of the Trial Court."

9.The defendant has filed the petition belatedly. He has not filed the petition at the earliest point of time particularly before the suit was decreed exparte. The enormous delay and laches on the part of the respondent/defendant thereby protracting and holding up the proceedings had been lost sight of by the court

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below.

10.In the above circumstances, the order of the learned Subordinate Judge, Dharapuam, is set aside and the civil revision petition is allowed. No costs. Consequently the connected M.P.No.1 of 2006 is closed.

11.However the learned Subordinate Judge, Dharapuram, is directed to dispose of the suit within a period of four months from the date of the receipt of a copy of this order. No costs. Consequently the connected M.P.No.1 of 2006 is closed.

vk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
The Subordinate Judge,Dharapuram.

+ ONE CC TO M/S. Aiyar and Dolia Advocate sr no. 62689
+ ONE CC TO Mr. N.Manokaran, Advocate sr no. 63123

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